IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1)S.B. CRIMINAL REVISION PETITION NO. 1147/2006
RAJENDRA SINGH & ORS. Vs. STATE OF RAJASTHAN & ANR.

(2)S.B. CRIMINAL REVISION PETITION NO. 1148/2006
RAJENDRA SINGH & ORS. Vs. STATE OF RAJASTHAN & ANR.
&
(3) S.B. CRIMINAL REVISION PETITION NO. 1149/2006
RAJENDRA SINGH & ORS. Vs. STATE OF RAJASTHAN & ANR.

DATE: 22.03.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Anurag Sharma for the accused-petitioners.
Mr. Ashwini Kumar Sharma, PP for the State.
Mr. Amar Singh and
Mr. Tripurari Sharma for the respondents.

****

Since all these three revision petitions are directed against the common impugned order dated 13.04.2006 passed by the Special Judge (Sati Niwaran) Rajasthan & Additional Sessions Judge, Jaipur, therefore, they are being decided by this common order.

The facts of *S.B. Criminal Revision Petition No. 1147/2006* are taken as leading case. This criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioners against the order dated 13.04.2006 passed by the Special Judge (Sati Niwaran) Rajasthan & Additional Sessions Judge,

Jaipur in Criminal Revision Petition No. 84/2006, whereby the revision petition filed by the respondent No.2 has been allowed and while setting aside the order dated 18.01.2006 passed by the Additional Chief Judicial Magistrate No.1, Jaipur City in Criminal Case No. 54/2005 remanded the matter back to the trial Court with direction to pass the order of cognizance against the accused-petitioners for the offence under Sections 500 and 193 IPC in accordance with the provisions of law.

Learned counsel for the accused-petitioners submits that the petitioners were not made party in the said revision petition and without hearing the petitioners, the Revisional Court cannot pass any order and to this effect he has referred Proviso to Section 398 Cr.P.C., whereby it is made clear that no Court shall make any direction under this Section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

He further referred the order of the trial Court dated 18.01.2006, whereby the complaint filed by the respondent under Section 500 and 193 IPC itself is dismissed as not maintainable, against which the complainant-respondent preferred a criminal revision

petition before the Revisional Court and the Revisional Court having considered the evidence recorded under Section 202 Cr.P.C. and the judgment rendered by the Hon'ble Supreme Court in the case of **M.N. Damani Vs. S.K. Sinha and others, reported in 2001 Cri.L.J. 2571** and considering the provisions of Sections 200, 202, 203 and 204 Cr.P.C. and as per the evidence adduced in support of the complaint, observed that prima-facie case is made out against the accused-petitioners for the offence under Sections 500 and 193 Cr.P.C., therefore, observing this fact after setting aside the order of the trial Court dated 18.01.2006 and considering the ratio decided by the Hon'ble Supreme Court in the case of **M.N. Damani (supra),** the Revisional Court has remanded the matter back to the trial Court for fresh adjudication and to pass fresh order in accordance with the provisions of law, but the Revisional Court has committed mistake directing to pass cognizance order meaning thereby directed the trial Court to pass cognizance order in accordance with the provisions of law, whereas the matter should be simply remanded back to the trial Court for fresh adjudication as per the evidence of the witnesses and the material available on record in accordance with the

provisions of law and as interpreted by the petitioners that it is an order for passing cognizance order and not a remand order. Although the Revisional Court intended to remand the matter but the intention of the Revisional Court is clear to remand the matter back to the trial Court for fresh adjudication and to pass fresh order of cognizance.

Fresh order of cognizance does not mean to pass cognizance order and, therefore, the order passed by the Revisional Court be taken as purely and simply a remand of the case and it is for the trial Court that without influencing the observations made by the Revisional Court, shall pass fresh order on the complaint filed by the complainant-respondent and shall pass fresh order in accordance with the provisions of law.

With regard to the question that the petitioners were not heard prior to passing of the order by the Revisional Court, still case is remanded back to the trial Court and as held by the Hon'ble Supreme Court in the case of **Sashi Jena And Others Vs. Khadal Swain And Another, reported in (2004) 4 SCC 236,** Section 202, Scope of inquiry- Accused has no right to participate and cross-examine any prosecution witness.

Similar view has been taken by the Hon'ble Supreme Court in the case of **M.N. Damani (supra),** which has been relied by the Revisional Court.

Per contra, learned counsel for the accused-petitioners has placed reliance on the judgment rendered by this Court in the case of **Radhey Shyam Vs. State of Rajasthan & Anr., reported in 2000(1) RCD 7 (Raj.),** wherein this Court while dealing with Sections 398 and 482 Cr.P.C., has observed that Magistrate accepted the F.R.- In revision filed by the complainant, Addl. Sessions Judge directed the Magistrate to take cognizance- Legality of the order- Magistrate may be directed to hold further enquiry- Direction given by Addl. Sessions Judge is beyond the jurisdiction and deserves to be set-aside.

No doubt it is the settled preposition of law that the Revisional Court can only remand the matter and it is for the trial Court to pass order of cognizance and here in the instant case, the Revisional Court also simply remanded the case back to the trial Court with a direction to pass cognizance order in accordance with the provision of law, which does not mean that it is mandatory direction to pass cognizance order against the accused-petitioners. It is for the

trial Court to consider each and every aspect and after appreciating the evidence recorded under Section 202 Cr.P.C., shall pass fresh order.

In view of the observations made herein above, I find no illegality in the impugned order dated 13.04.2006 passed by the Revisional Court and as it is already made clear that the observations made by the Revisional Court vide its impugned order shall not come in the way while deciding the matter by the trial Court afresh in accordance with the provisions of law.

Consequently, all the revision petitions fail and the same are hereby dismissed.

(K.S. RATHORE),J.

/KKC/